

Chapter 2

Filing the Notice of Appeal

Now that you have determined that you *can* file an appeal, the first thing you need to do is file and serve your Notice of Appeal. Step 4 will tell you how to do this, how much it will cost and what happens if you do not pay on time.

Step 4. How does the appellant prepare the Notice of Appeal?

Look at the exhibits and instructions for Sample A at the back of this manual. In the upper left-hand corner of the form is the place where the name and address of the attorney or the self-represented appellant goes. Below that is the name of the case (the **caption**) as it appeared on the papers in the superior court. The case number (item 7) is the superior court number. The appellant fills in the judgment and/or order that is being appealed and the date of the entry of judgment or order. The appellant, the attorney for the appellant, or the self-represented appellant bringing the appeal signs the *Notice of Appeal*. Once appellant has completed the *Notice of Appeal*, a copy must be “served on” all parties and the original must be filed with the superior court appeals section.

What is service? Service of documents means mailing or hand-delivering. You let the parties know what you are doing by having copies of the documents you plan to file with the court—in this case, the *Notice of Appeal*—mailed or hand-delivered to them. **Copies of all of the documents you prepare should be served on all counsel and self-represented parties, and the original filed with the court.** A document may be hand-delivered or mailed only by someone who is over the age of 18 and is not a party to the lawsuit. For example, if you are self-represented in an appeal, you cannot hand-deliver or mail your *Notice of Appeal* to the parties. Someone else, an adult who is not a party, must do it for you.

How do you know the document was served? Sample C is a *Proof of Service* which must be filled out and attached to each document you file. Depending on whether you are having service done by mail or in person, the person doing the service needs to fill out the *Proof of Service* properly. The originals of the *Notice of Appeal* and *Proof of Service* are filed with the **appeals section** of the superior court. (CRC rule 1(a).) For the locations of superior courts within the jurisdiction of the Fifth Appellate District, see Appendix 2.

Is there a charge for filing an appeal? The appellant must include a \$655 filing fee by check, money order, or cash along with the *Notice of Appeal* unless the appellant has a fee waiver. A check or money order should be made payable to “Clerk, Court of Appeal.” A second check or money order for \$100, made payable to “Clerk of the Superior Court,” must also be included and is a deposit for the clerk’s transcript. This second check need not be included if you, as appellant, plan to prepare an appendix under rule 5.1, described later.

Will the court waive the filing fee? If you, as appellant, have a fee waiver from the superior court for the case number(s) you are appealing, and it was granted within the last 6 months, include a copy of the fee waiver with the *Notice of Appeal*. If you, as appellant, did not get a fee waiver in superior court, you may apply to the Court of Appeal for a waiver under rule 985. (CRC rule 1(b).) A fee waiver allows persons below a certain income level to file their appeals without paying the filing fee. (See Sample D for information on fee waivers.)

What happens if fees are not paid? If these fees are not paid or waived, or if the appellant's check bounces, the court gives the appellant notice that he or she has 15 days to pay the fee or have it waived before the appeal is dismissed. If the matter is dismissed, the court may, upon a motion, reinstate the appeal if there is a good reason why the payment is late. (CRC rule (1)(c).) If the court grants the motion to reinstate the appeal, it gives a specific time for payment(s) to be made.